

(1952) 07 KL CK 0037

High Court Of Kerala

Case No: Second Appeals No"s. 162 and 41 of 1124 (T)

Krishnan Asari Chellappan Asari

APPELLANT

Vs

Kanakku Aiyappan Pillai Krishna
Pillai

RESPONDENT

Date of Decision: July 11, 1952

Citation: AIR 1952 Ker 40

Hon'ble Judges: Sankaran, J

Bench: Single Bench

Advocate: T.R. Subramania Iyer, for the Appellant; T.K. Narayana Pillai, for the Respondent

Final Decision: Dismissed

Judgement

Sankaran, J.

These two appeals arise out of the decree in O. S. No. 838 of 1119 on the file of the Neyyattinkara District Munsiff's Court. The suit is for redemption of the plaint property. The suit property belonged to three brothers, Mayitti Raman, Mayitti Krishnan, and Mayitti Velayudhan, who belonged to a community known as Thala Nairs. The three brothers together mortgaged the property under Ex. B dated 6-10-1094 for 700 Fs. Subsequently Velayudhan died and according to the plaintiff Velayudhan's one-third share in the property devolved on the other two surviving brothers. In the year 1106, Raman alone who had by that time become entitled to one-half of the property, executed a Purakkadom for 350 fanams charged on his one-half share of the property. On 1-5-1111 Krishnan executed another Purakkadom Ex. II in respect of his half share in the property. A period of 12 years was also fixed under this document. The plaint allegation is that Raman also died leaving no widow or children, with the result that his share also devolved on Krishnan who conveyed the entire equity of redemption of the property in favour of the plaintiff.

On the strength of that sale deed (Ex. A), the present suit has been instituted for redeeming the property on payment of the mortgage and Purakkadom amounts. By

this time, defendants 5 and 6 had acquired the rights under the mortgage and Purakkadom deeds. The 5th defendant resisted the suit and contended that Raman's half share in the property devolved on his wife Lakshmi and daughter Kamalamma from whom such right has been purchased by the 5th defendant under Ex. VI sale deed dated 4-9-1119. Accordingly, it was contended by the 5th defendant that the sale deed Ex. A executed by Krishnan in favour of the plaintiff could operate only in respect of his half share and that the suit even in respect of that half share is premature because the 12-year period fixed in Ex. IT was not over on the date of the suit. After enquiring into the points in dispute between the parties, the trial court found that Kamalamma was not the daughter of Raman and that he left only the widow Lakshmi who was entitled only to one-half of the assets left by Raman, the other half devolving on his brother Krishnan as per the provisions of the Nair Act. It was also found that the suit in respect of Krishnan's half share of the property was premature and that redemption could be allowed only in respect of one-half of the half share which belonged to Raman and which devolved on Krishnan by way of inheritance.

Accordingly a decree for redemption was passed in respect of that one-fourth share in the property. That decree was confirmed by the lower appellate Court. The 5th defendant has preferred S. A. No. 162 of 1124 against that decree. The other appeal S. A. No. 41 of 1124, is by the plaintiff against the lower court's finding that the mortgagors are governed by the Nair Act. and also questioning the correctness of the decree disallowing redemption in respect of the three-fourth share of the property.

2. The question raised in S. A. 41 of 1124 that the three brothers Raman. Krishnan and Velayudhan who had executed the mortgage deed Ex. B, are not governed by the Nair Act, may be disposed of at the outset. This contention was not seriously pressed by the learned advocate for the appellant at the time of the argument. As already stated, the mortgagors under Ex. B are Thala Nairs by caste. The question whether the Thala Nairs are also included in the bigger community of Nairs in general had come up for the consideration of the erstwhile Travancore High Court and in - Padmanabhan Narayanan v. Ummini Parvathi". 16 Trav LJ 583; it was ruled by a Full Bench of that Court that Thala Nairs belonged to a sub-section of the Nair community and are governed by the Marumakkathayam Law of Inheritance and the provisions of the Nair Act are applicable to them. It is also significant to note that there is nothing in the Nair Act to indicate that any of the sub-castes within the Nair community are excluded from the scope and operation of the Act. In view of that fact and also in view of the ruling cited above. I hold that the Thala Nairs are governed by the Nair Act.

3. The other point raised in S. A. No. 41 of 1124 is that the plaintiff should have been given a decree for redeeming the entire property. As already stated. Krishnan had executed a purakkadom Ex. II dated 1-5-1111 in respect of his half share in the

property fixing a further period of 12 years for redemption of that share. That period had not expired on the date of the present suit and hence the lower courts were right in holding that the suit so far as it related to Krishnan's half share was premature.

4. It follows therefore that both the points raised in S. A. No. 41 of 1124 fail and that appeal has only to be dismissed.

5. Coming to S. A. No. 162 of 1124 the point that was pressed at the hearing was that lower courts erred in holding that Kamalamma was the daughter of Krishnan and not of Raman. This concurrent finding is a finding on a question of fact and the 5th defendant appellant is not entitled to agitate the same matter in second appeal. It is also seen that the finding is supported by reliable and acceptable evidence on the record. (His Lordship then discussed the evidence and came to the conclusion).

6. On a consideration of all these aspects. I agree with the lower court's conclusion that Kamalamma is not the daughter of Raman and that Raman died leaving only his widow Lakshmi who could succeed to one-half of his estate only. It follows therefore that the half share of Raman's assets devolved on Krishnan and that the sale deed Ex. A has come into operation in respect of that half share out of Raman's half property, i.e., Ex. A is valid in respect of three-fourth share of the suit property excluding the one-fourth share which devolved on Lakshmi. As already stated, the suit for redemption of Krishnan's half share of the property is premature and is sustainable only in respect of the other one-fourth share. The decree directing redemption of that one-fourth share does not therefore call for any interference.

7. No other point was pressed at the time of hearing.

8. In the result both these second appeals are dismissed with costs.